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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,726	12/29/2003	Chung-Wen Wang	252011-1380	2029
47390 7590 02/18/2010 THOMAS, KAYDEN, HORSTEMEYER & RISLEY LLP 600 GALLERIA PARKWAY, 15TH FLOOR ATLANTA, GA 30339				
EXAMINER ANDERSON, FOLASHADE				
ART UNIT		PAPER NUMBER		
3623				
MAIL DATE		DELIVERY MODE		
02/18/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/747,726

Applicant(s)

WANG ET AL.

Examiner

FOLASHADE ANDERSON

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-6, 9-11, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 9-11, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This FINAL office action is in response to Applicant's submission filed on 12/02/2009.

Status of Claims

2. Currently, claims 1, 4-6, 9-11, 14 and 15 are pending. Claim 1i is amended. Claims 2, 3, 7, 8, 12, 13 and 16-21 are canceled.

Response to Amendment

3. Applicant's amendments to claim 1 are sufficient to overcome the 35 U.S.C. 101 rejection set forth in the previous office action.
4. Applicant's cancellation of claims 16-21 has rendered the 35 U.S.C. 112, first and second paragraphs moot.

Response to Arguments

5. Applicant's arguments filed with respect to the 35 U.S.C. 103 have been fully considered but they are not persuasive. Applicant's argues that the prior art of record fails to disclose (a) capacity reservation based on historical customer delivery data; (b) computer further reserving production capacity for the customers in accordance with the different categories; and (c) the combination of Singh and Kennedy is improper and therefore does not render the claims obvious.

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6. In response to Applicant's argument (5.a.) the Examiner respectfully disagrees and it is noted the recitation "capacity reservation based on historical customer delivery data" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Additionally it is noted that with respect to similar arguments made with respect to another rejection Applicant made the following arguments

The Office Action went on to note that preambles are generally not accorded any patentable weight. In support of this position, the Office Action cited two cases (one that is 35 years old, and the other that is over a half century old). Applicant notes that the law has evolved since the decisions of these cases. For example, the very first sentence of MPEP 2111.02 states: "The determination of whether a preamble limits a claim is made on a case-by-case basis in light of the facts in each case; there is no litmus test defining when a preamble limits the scope of a claim." *Catalina Mktg. Int'l v. Coolsavings.com, Inc.*, 289 F.3d 801,808, 62 USPQ2d 1781, 1785 (Fed. Cir. 2002). MPEP 2111.02 goes on to state that: "If the claim preamble, when read in the context of the entire claim . . . is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999).

While it is agreed that *In re Hirao*, and *Kropa v. Robie*, are 35 and 60 year old decisions they are still good law as neither was been overruled by neither the Board nor the Supreme Court. Both apply here where the "capacity reservation based on

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historical customer delivery data" is not necessary to give life, meaning nor vitality. Further as illustrated in the previous rejection Singh teaches "historical customer delivery data" (see Singh abstract "letting users create forecast from multiple history streams (for example, shipments data") and Kennedy teaches "capacity reservation" thus the combination of teaches "capacity reservation based on historical customer delivery data," (see Kennedy col. 1, lines 22-23 "capacity management" and col. 3, lines 19-21 "promises made to those requests become allocated to that sales entity" i.e. reserved.) where it has been recognized that "combining prior art elements according to known methods to yield predictable results," KSR International Co. v. Teleflex Inc. (KSR), 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007).

7. In response to Applicant's argument (5.b.) the Examiner respectfully disagrees Kennedy teaches "Forecast requests are then generated from the committed levels. Promises made to those requests become allocated to that sales entity for it to use to form promises for customer requests." (col. 3, lines 19-23). Kennedy also teaches that "sales entities to be organized into hierarchies" (col. 3, lines 25-26) where hierarchies are interrupted to be categories and "each sales entity can define . . . the customer," (col. 3, lines 49-53). Lastly, Kennedy teaches "the sellers may own their own allocations against which they can promise to their customers," (col. 6, lines 55-58). Thus the teachings of Kennedy renders the claimed limitation of "reserving production capacity for the customers in accordance with the different categories" obvious.

8. In response to Applicant's argument (5.c.) the Examiner respectfully disagrees, the previous office action specifically states:

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Singh the reserving production capacity for the customers in accordance with the different categories as taught by Kennedy since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

The record is clear that the KSR rational (A) the combining of prior art elements according to known methods to yield predictable results. Singh teaches in an analogous art "systems and methods for demand forecasting that enable multiple-scenario comparisons and analyses by letting users create forecasts from multiple history streams (for example, shipments data, point-of-sale data, customer order data, return data, etc.) with various alternative forecast algorithm theories." (Singh – abstract). Kennedy teaches in an analogous art a "system and method . . . provides the forecast requests to supplier sites and receives responsive promises made by the supplier . . . represents the promises made by the supplier sites to the seller entity as available to promise . . . to fill actual customer requests" (Kennedy – abstract).

The previous office action also clearly states that the primary reference of Singh does not expressly teach:

Singh does not reserving production capacity for the customers in accordance with the different categories. (See Non-final Office Action mailed 09/02/2009, page 8 at second full paragraph).

and that Kennedy teaches:

reserving production capacity for the customers in accordance with the different categories (co1.3, lines 19-21).

Thus the reason to combine has been clearly made on the record and is maintained in this office action.

Further Applicant makes the argument with respect to the combination that the level of ordinary skill is not resolved. It is noted that specifying a particular level of skill is not necessary where the prior art itself reflects an appropriate level. If the only facts of record pertaining to the level of skill in the art are found within the prior art of record, the court has held that an invention may be held to have been obvious without a specific finding of a particular level of skill where the prior art itself reflects an appropriate level. *Chore-Time Equipment, Inc. v. Cumberland Corp.*, 713 F.2d 774, 218 USPQ 673 (Fed. Cir. 1983). See also *Okajima v. Bourdeau*, 261 F.3d 1350, 1355, 59 USPQ2d 1795, 1797 (Fed. Cir. 2001).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 4, 6, 9, 11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al (US Patent 7,080,026 B2) in view of Kennedy (US Patent 6,188,989 B1) and Official Notice.

In regards to claim 1 Singh et al discloses a computer implemented method for capacity reservation based on historical customer delivery data, comprising the steps of:

- a customer interface (col. 5, lines 12-13) acquiring historical customer delivery data of a plurality of customers (col. 9, lines 9-13);
- a controller computer (figure 3 and 8) classifying the customers into a plurality of different categories according to the historical customer delivery data (col. 6, lines 49-53); and

Singh teaches the controller computer (figure 3 and 8) and terms as an upper limit of capacity for forecast made based on historical data (col. 11, lines 28-33); however, Singh does not reserving production capacity for the customers in accordance with the different categories.

Kennedy teaches reserving production capacity for the customers in accordance with the different categories (col.3, lines 19-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Singh the reserving production capacity for the customers in accordance with the different categories as taught by Kennedy since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Neither Singh nor Kennedy expressly disclose **comprises delivery time requirements corresponding to each customer wherein the delivery time requirements comprise requirements selected from the group consisting of fixed delivery time requirements, distributed delivery time requirements, and floating delivery time requirements.**

Official notice is taken that fixed, floating and distributed delivery time requirement types were old and well know in the art at the time the invention was made to have for example manufactures require their supplier to delivery raw material at different intervals of time based on their need as is common practice in just in time manufacturing.

It would have been obvious to one of ordinary skill in the art to induce in the invention of Singh and Kennedy the old and well known features of **comprises delivery time requirements corresponding to each customer wherein the delivery time requirements comprise requirements selected from the group consisting of fixed delivery time requirements, distributed delivery time requirements, and floating delivery time requirements** as taught by the Official Notice; since the claimed invention is merely a combination of old element and in the combination each element merely would have preformed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

With regards to claims 6 and 11 which are directed to the medium and system respectively for implanting the method and are almost identical to claim 1 are therefore rejected for the same reason given above.

In regards to claims 4, 9 and 14 Singh teaches wherein **classification further comprises:**

- **designating customers with fixed delivery time requirements as first category customers** (col. 6, lines 49-53; where the group may be given any title based on any criteria set by the user);
- **designating customers with distributed delivery time requirements as second category customers** (col. 6, lines 49-53; where the group may be given any title based on any criteria set by the user);; **and**
- **designating customers with floating delivery time requirements as third category customers**(col. 6, lines 49-53; where the group may be given any title based on any criteria set by the user);

With regards to claims 9 and 14 which are directed to the medium and system for implanting the method and are almost identical to claim 4 are therefore rejected for the same reason given above.

11. Claims 5, 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et (US Patent 7,080,026 B2) Kennedy (US Patent 6,188,989 B1) and Official Notice and in further view of Boarders et al (US Patent 7,139,721 B2).

In regards to claims 5, 10 and 15 Singh does not teach the following limitation; however Kennedy does disclose **wherein reservation further comprises:**

- **reserving capacity for the first category customers** (col. 3, lines 27-30);
- **calculating a first remaining capacity** (col. 5, lines 20-30)
- **calculating a second remaining capacity**(col. 5, lines 35-37);

Kennedy does not teach the following features; however Borders does teach:

- **reserving the first remaining capacity for the second category customers**
(col. 16, lines 41-53 and fig. 10);
- **reserving the second remaining capacity for the third category customers**
(col. 16, lines 41-53 and fig. 10);

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Singh and Kennedy the **reserving** as taught by Borders since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

With regards to claims 10 and 15 which are directed to the medium and system for implanting the method and are almost identical to claim 3 are therefore rejected for the same reason given above.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FOLASHADE ANDERSON whose telephone number is (571)270-3331. The examiner can normally be reached on Monday through Thursday 8:00 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Folashade Anderson/
Examiner, Art Unit 3623

/Andre Boyce/
Primary Examiner, Art Unit 3623